

Local Lodge 758, International Association of Machinists and Aerospace Workers and Menasco, Inc. Cases 31-CB-3489 and 31-CB-3588

12 September 1983

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 5 May 1981 Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed limited exceptions and a brief in support thereof, and the Charging Party filed cross-exceptions and a supporting brief as well as a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law

¹ We agree with the Administrative Law Judge that Respondent violated Sec. 8(b)(1)(A) of the Act by fining 21 employees for crossing a picket line and returning to work without their having resigned from Respondent in accord with its rule prohibiting resignations during a strike or within 14 days preceding its commencement. The Administrative Law Judge correctly found that since the employees had not been advised of the existence of Respondent's rule, Respondent could not lawfully fine them for any alleged breach of that rule. He, thus, found it unnecessary to pass on the validity of Respondent's rule. Although we agree with this finding, we note that the Board, subsequent to the issuance of the Administrative Law Judge's Decision, issued its decision in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), in which it found that a union's rule, identical to the one herein, constituted an unlawful restriction on a member's Sec. 7 right to resign and was neither valid nor enforceable. It is therefore apparent that under either the plurality or concurring views expressed by the Board in *Dalmo Victor*, Respondent's rule in the instant case would also be invalid and unenforceable. Consequently, in addition to the reasons stated by the Administrative Law Judge, the fines imposed on the 21 employees who resigned their membership in Respondent and returned to work during the strike would also be unlawful for having been imposed pursuant to an invalid rule.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. Nor do we find any merit to Respondent's contention that the Administrative Law Judge's credibility resolutions, findings, rulings, and interpretation of the evidence demonstrate bias and prejudice on his part against Respondent. Rather, having carefully and fully considered the record and the Administrative Law Judge's Decision herein, we perceive no evidence that he prejudged the case, made any prejudicial rulings, or demonstrated a bias against Respondent in his analysis or discussion of the evidence.

² In the last full sentence of sec. III.D of his Decision, the Administrative Law Judge, referring to Respondent's obligation to refund fines unlawfully imposed on former members who crossed a picket line and returned to work, and in response to its defense that the Employer had agreed to pay the fines for said employees, stated that "the fact that fines may be paid by the employee is immaterial," citing *NLRB v. Musicians*

Judge and to adopt his recommended Order, as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Local Lodge 758, International Association of Machinists and Aerospace Workers, Burbank, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. In paragraph 1(b), line 2, delete the name "Menasco, Inc." and in place thereof insert the word "Respondent."
2. Substitute the attached notice for that of the Administrative Law Judge.

Local 66 (Civic Music Assn.), 514 F.2d 988 (2d Cir. 1975). We do not disagree with this proposition. However, in light of his earlier discussion concerning Respondent's above-stated defense, it is apparent that the Administrative Law Judge meant to say that it was immaterial whether the Employer, and not the employee, had paid the fine, which statement would be consistent with a holding made by the Board in *Musicians Local 66 (Civic Music Assn.)*, 207 NLRB 647 (1973), enf. denied on other grounds and remanded for further proceedings in 514 F.2d 988 (2d Cir. 1975).

³ Par. 1(b) of the Administrative Law Judge's recommended Order shall be modified to reflect that the employees who resigned were members of Respondent, and not of Menasco, Inc., as inadvertently stated by the Administrative Law Judge.

APPENDIX

**NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL NOT prevent or attempt to prevent employees of Menasco, Inc., from working for that employer, or any other employer, or from exercising their rights not to join or support any strike, by means of the following conduct: blocking or preventing ingress and egress of employees and others into and from Menasco's plant area, by mass picketing or by picketing of individuals or groups; threatening to inflict, or inflicting, bodily harm on employees or security guards, or any other individuals; placing nails or any other sharp objects in the roadways, entrances, parking lots, or other areas at Menasco's plant; jumping or climbing upon, or threatening to hit or hitting, or seizing or tipping or slashing, or puncturing the tires of, or in any other manner damaging or interfering with the operation of, any vehicle entering,

leaving, or parked at or near Menasco's plant area; writing down, or posting on bulletin boards, at any picket line or within the vicinity thereof, the names, addresses, or license plate numbers of temporary replacement employees; throwing firecrackers, rocks, bottles, or any other objects at individuals, buildings, or the premises of Menasco; carrying or exhibiting or threatening with any firearm at or near any picket line; threatening to follow, or following, any employees after the employees leave Menasco.

WE WILL NOT restrain or coerce employees who have resigned from, and no longer are members of, Respondent, in the exercise of rights guaranteed them by Section 7 of the Act, by trying employees and imposing fines on them because of their postresignation conduct in working at Menasco, Inc., during the strike which began on 31 May 1979.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them in Section 7 of the Act.

WE WILL rescind the fines levied upon our former members, and refund to the named individuals any money they may have paid to us pursuant to any fine we levied which has been found to have been illegal, with interest, in the following manner:

a. For the following employees, who submitted their resignations from the Union prior to returning to work for Menasco, Inc., their fines will be rescinded in their entirety:

Dale A. Barclay	Phillip D. Bertram
Juvenio Gallegos	Miguel T. Guevarra
James Hanson	James Meador
Frank Stampfl	

b. For the following employees, who submitted their resignations from the Union after their return to work, their fines will be rescinded, effective at 12:01 a.m. on the dates shown opposite employees' names:

Cristobal Aragon	10 January 1980
Daniel Avila	14 December 1979
Charles Baker	13 October 1979
Isidore Bolduc	3 December 1979
Andrew S. Brymer	7 December 1979
Estill B. Crawford	8 January 1980
Roger Jenrich	27 December 1979
Edward Martinez	19 October 1979
Salvatore Ricci	7 December 1979

James Witt 14 November 1979

c. For the following employees, who submitted their resignations from the Union after their return to work, their fines will be rescinded, effective at 12:01 a.m. on the dates shown opposite their names:

William Collins	12 December 1979
Anthony Cuneo	20 November 1979
Leon V. Hawk	30 November 1979
Erling Olson	11 December 1979

LOCAL LODGE 758, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was tried in Los Angeles, California, on various dates in July, August, and October 1980.¹ The complaint in Case 31-CB-3489 is based on a charge filed October 18 by Menasco, Inc. (Menasco). The complaint in Case 31-CB-3588 is based on a charge filed by Menasco on February 4, 1980. Said two cases were consolidated for trial. The consolidated complaint,² issued May 7, 1980, alleges that Local Lodge 758, International Association of Machinists and Aerospace Workers (Union or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended (Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, Respondent, and the Charging Party (Menasco).

Upon the entire record,³ and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Menasco is, and at all times material herein has been, a corporation duly organized and existing under and by virtue of the laws of the State of California, with an office and principal place of business located in Burbank, California, where it is engaged in the business of manufacturing aircraft landing gear. In the course and conduct of its business operations, Menasco annually sells and ships goods and services valued in excess of \$50,000 di-

¹ All dates hereinafter are within 1979, unless stated to be otherwise.

² At the trial I granted the General Counsel's motion, over Respondent's objection, to delete 38 subparagraphs of the complaint, primarily because the actions alleged therein to be violative of the Act were cumulative and, if proved, would not affect any remedy if actions alleged but not deleted were proved. The amended consolidated complaint is referred to herein as the complaint.

³ The General Counsel's motion to correct transcript, dated December 17, 1980, was not opposed and hereby is granted.

rectly to customers located outside the State of California, and annually derives gross revenues in excess of \$500,000.

I find that Menasco is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Background

Menasco has a plant in Burbank, California, where it manufactures aircraft landing gear.⁴ The total number of employees in the plant is approximately 800, of which approximately 465 to 485 are production and maintenance employees. Respondent has represented the production and maintenance employees and has bargained with Menasco for them since the early 1940's.⁵ The most recent collective-bargaining agreement was effective May 19, 1976, to May 19, 1979. Menasco and Respondent were unable to reach an agreement to supplant the one which expired in 1979, and on May 31 the Union engaged in a strike, which has continued to the present time. Employees have picketed the plant since the strike began, 24 hours each day and 7 days each week.

Since early in the strike, the plant and its environs have been the scene of many incidents, some rather violent and serious, and some of a trivial nature. Police officers frequently have been called to the premises to assist in maintaining peace, and Respondent's officials, as well as Menasco's representatives, often have been on, or near, picket lines during moments of tension and misconduct.

Menasco's plant has remained in operation, and production has continued, throughout the strike, partially as a result of some employees abandoning the strike, and partially as a result of employees being hired to replace strikers.⁶

The General Counsel contends that Respondent and its representatives on the picket line engaged during the strike in many acts of violence and intimidation, thereby

depriving employees of their rights under the Act in violation of Section 8(b)(1)(A). Those alleged acts of violence are discussed *infra*.

Approximately in September 1979, employees commenced returning to work. By October 20, 1980, approximately 85 to 100 employees had returned. Some employees resigned from the Union just prior to, or soon after, returning to work. By January 7, 1980, the resignations totaled 21, and on that date Respondent mailed notices to each of the 21 employees, stating that they had been charged with violating the Union's constitution, and would be tried on those charges February 2, 1980. None of the 21 employees attended the trial. On February 14, 1980, Respondent mailed notices to all of the 21 employees, advising them that they had been tried and found guilty, on February 9, of the charges against them. The notice stated that the penalties for the violations were \$1,000 each for the initial crossing of the picket line and \$10 per day for each crossing thereafter, plus a 5-year disqualification from holding any union office.

The General Counsel contends that the union trial and penalties deprived employees of their rights under the Act, in violation of Section 8(b)(1)(A) of the Act. This issue is discussed *infra*.

A. Alleged Acts of Violence

1. Alvin Bruene,⁷ Menasco's traffic manager, testified that on June 8 at approximately 10 a.m. he was driving a tractor-trailer out of the plant area through gate C. Bruene stated that there were 6 or 8 pickets at the gate, and 35 or 40 pickets just beyond the gate. He said the pickets "were pounding on the sides of the tractor and they had slammed the rear view mirrors on both sides in where I lost rear view vision." He said it required 15 to 20 minutes to inch forward to the street and, during that time, someone threw a cup of hot coffee at him. Picketers present during the incident included, among others, Carl Kessler, Stephen Van Lydegraf, Pat Huey, and Virgil Popp.⁸ Bruene testified that, during the incident, Kessler called him a "son of a bitch" and a "bastard," and asked how long Bruene was going to continue driving a truck though the picket line.

Charles Doren, Menasco's manager of facilities engineering, corroborated Bruene's testimony, and identified the person who threw the coffee on Bruene as Joe Landin. Doren estimated the length of time of the incident as 5 to 10 minutes, and Bruene said he did not see Landin during the incident, but those minor discrepancies do not alter the findings made relative to the incident.

Kessler, Huey, Popp, and Landin testified, but only Landin denied any part of Bruene's or Doren's testimony—he said he did not throw hot coffee on Bruene.

⁷ Individuals sometimes are referred to herein by their last names.

⁸ Testimony established that Kessler was a member of the Union's negotiating and strike committee (the same committee acted in both capacities) and was the picket line coordinator; Van Lydegraf was a senior steward and a picket captain, and was an assistant picket line coordinator; Huey was Respondent's president; and Popp was a picket captain. The agency issue is discussed *infra*.

⁴ G.C. Exh. 2 is a map of the Burbank plant.

⁵ Respondent's total membership is approximately 1,200.

⁶ Respondent contends that Menasco hired a "goon squad" to "break up" the Union, and frequently refers in its brief to nonstriking and replacement employees as "strikebreakers" and "scabs." The set piece in the "goon squad" theory is one Lawrence Bittaker, a former Menasco employee and an accused multiple murderer (later found guilty and sentenced to death) subpoenaed by Respondent as a witness and brought into court handcuffed, shackled, escorted by law officers, and accompanied by television and still cameramen. (No photographs were permitted by me.) Neither that display, nor any other evidence, established the existence of a "goon squad." Replacement employees were not shown to have been hired as strikebreakers. None of the witnesses appeared to fit the pattern urged by Respondent. At the time of the hearing, the strike had been in progress approximately 14 months, and Menasco continued to produce at the plant. Such a situation is not consistent with the hiring of "strikebreakers" merely posing as working employees, as Respondent contends.

Bruene and Doren were credible witnesses, and their versions of the incident are accepted as accurate. It is found that subparagraphs 7(g), (w), and (bb) of the complaint are supported by the evidence.

2. Jim Cook, Menasco's maintenance supervisor, testified that, on June 8 at approximately 3:30 p.m., he saw Landin, whom he supervised at work, at the gate B entrance of the plant, with approximately 12 other picketers. He said he saw Landin "down on one knee . . . placing nails on a B Gate entrance on the ground." Cook said he asked "what are you doing, Joe?" and:

A. When he looked up and saw me and Mr. Hartman, he jumped up and said, "They caught me! They caught me!" and ran across the street to, I guess what would be, the California lobby entrance. It's Building 16 — in that area where he stood.

Q. What did you do, if anything, at that point?

A. I walked over to the entrance and knelt down myself, and started picking up nails along with Jack Hartman.

Q. And how long did you do that?

A. It could have been a full ten minutes.

Q. And did anything further occur at that point?

A. As I was kneeling down and picking up the nails as best as I could and sweeping the majority of a large amount of nails on the side of the entrance into the storm drain, the picketers were walking back and forth very close to both of us and I got bumped on my right hand across the knuckles with a guy who was walking. The first time it happened, I didn't think anything of it because the picketers were actually walking inches away from us—in front of us and to the rear of us. The second time it happened it was the same shoe. I still did not make any remarks or any questions at that time. I just continued picking up the nails until it was clear.

Q. Did you recognize the person that brushed your or —

A. No.

Cook further testified that, as he was leaving the plant after the incident, through the gate B entrance in his car (which was a red color), Landin was standing in the street and yelled out two or three times, "Get the guy with the red car."

Landin denied placing nails in the road, denied threatening or assaulting Cook, and testified that he heard a security guard admit placing nails in the driveway.

Cook was a convincing witness, and his version of the incidents is credited. Landin's attempt to place the blame for the nails on a security guard is given no credence. It is found that subparagraphs 7(x), (z), and (jj) of the complaint are proved.

3. Janice Gibson, a clerk employed by Menasco, testified that, as she was leaving the plant on June 11 at 5 p.m., two picketers jumped on the rear of her car while she was temporarily stopped, and bounced the car up and down for approximately a minute, causing her to be frightened. Gibson testified that she discussed the incident with her fellow employees.

Respondent presented no evidence relative to this incident.

Gibson is credited, and it is found that subparagraph 7(b) of the complaint is supported by the record.

4. Franklin Hyde, Menasco's manager of employee relations, testified that on June 11 or 12 between 3 and 5 p.m. he saw 9 or 10 picketers, including Joe Garcia and Rogelio Lopez, block a station wagon being driven by Joe Whalen, of United Technical Services (UTS).⁹ Hyde testified that as Whalen eased his vehicle forward Lopez held a picket sign "and thrust it at the car with quite a force, such a force that there was quite a bang and it threw his hand back." Hyde said the sign hit the car window on the drivers side, the window being rolled up, but the window was not broken.

Whalen did not testify.

Respondent introduced no testimony or evidence relative to this issue.

Hyde is credited, and it is found that subparagraph 7(h) of the complaint is supported by the record.

5. Hyde testified that on June 12 at approximately 5 p.m. at gate B, he saw a group of 7 to 10 picketers block a brown Pontiac automobile driven by a temporary employee for 2 or 3 minutes as the car was going through the gate. Hyde said the picketers surrounded the car on two sides and the front, "and started beating on the car with their fists and the picket sign on the hood, on the windshield, on the sides, and continued to pound on the car and yell as the car slowly moved through." Hyde stated that the car stopped at one time, half out of the gate.

The driver of the car was not identified, nor did he testify.

Respondent did not introduce any testimony or evidence on this issue.

Hyde is credited, and it is found that the allegations of subparagraph 7(11) of the complaint are proved.

6. Doren testified that on approximately June 13 at 10:30 or 11 a.m., near parking lot C, he saw Vaughn Brower walking the picket line and dropping inch-long roofing nails from his pocket onto the street.

Brower did not testify. Respondent did not introduce any testimony or evidence relative to this issue.

Doren is credited, and it is found that subparagraph 7(aa) is supported by the record.

7. Hyde testified relative to an incident on June 14 at or about 8 a.m. Hyde stated: 30 or 40 strikers, some of whom held picket signs, were milling about, near gates B and C and in the adjoining street intersection. Picketers Oliver Budd¹⁰ and Barney Hines were in the group. A red Mustang automobile with two black men inside was blocked approximately 5 minutes from entering the plant gate by the picketers. While the red car was stopped, three or four other cars were stopped behind it, waiting to get into the plant area. Hines yelled obscenities at a passenger in the red car, and Budd tapped on the driver's window and stated, in effect, "Roll it down, please. I want to talk to you. When you have time, come by the

⁹ UTS contracted with Menasco to furnish temporary replacement employees for production and maintenance jobs held by picketers, as discussed *infra*.

¹⁰ Budd was a senior steward and a member of the strike committee.

union hall and we can do something for you." The red car thereafter left, without going into the plant area.

Budd testified that he walked to the driver's side of the red car, introduced himself as a leader of the Union and said he would appreciate it if they would recognize the picket line, that the passenger in the car indicated that they were looking for a job, and Budd referred them to the union hall.

Garcia testified that the picketers talked to the men in a nice tone, and that they left voluntarily. Garcia further stated that neither he nor Budd in any way prevented the men from going inside the plant. However, Garcia acknowledged that cars were backed up behind the red Mustang. Neither Budd nor Garcia denied the presence of the 30 to 40 pickets milling in the intersection.

The versions of Budd and Garcia are not believable, and are not credited. With 30 to 40 pickets milling about, with several cars backed up behind a blocked car, with Menasco hiring employees to replace strikers, and with a strike history of bad blood, the only logical conclusion is that the men in the red car were trying to get into the plant to apply for jobs, and that the picketers prevented them from entrance. In fact that conclusion is supported by Budd, who stated that the men were looking for jobs. It would be inconsistent to find that the men left voluntarily, since it was obvious that a serious strike was in progress. The job seekers would not have been there if they wanted to seek work through the Union. The presence of 30 to 40 pickets would be a strong deterrent to plant entry, even in the face of a mild request such as Budd said he made.

Clearly, the picketers stopped the job seekers, refused to permit their entry into the plant, intimidated them, and caused their retreat. Hyde's version of the incident has much support in the testimony of Budd and Garcia, and is credited.

It is found that subparagraph 7(j) of the complaint is proved.

8. William Wilson, a temporary employee, testified that on June 20 at approximately 5 a.m. he was stopped by four or five picketers at gate B as he was going to work for the first time at Menasco. Wilson testified that Kessler, who was parked nearby, joined the picketers and came to his car, where Kessler called him a "smart-ass" and directed the picketers to get Wilson's license plate number and make a note of the car's dents so the Union would not be held responsible for them. Kessler also told Wilson that the latter thought he was "Hot shit." Wilson was permitted to enter the plant area after a delay of approximately 10 minutes.

Respondent did not introduce any testimony or evidence relative to this issue, nor was it discussed in Respondent's brief, although Respondent did, in its brief, devote substantial argument to Wilson's alleged lack of credibility.

Wilson appeared to be a truthful witness. He was not challenged or contradicted on this issue, and he is credited. It is found that subparagraph 7(t) of the complaint is supported by the record.

9. Howard George, Menasco's general superintendent of manufacturing in June 1979, testified that on June 26 at 4:20 p.m. he was standing at gate B during the shift

change between the first and second shifts. Five or six picketers were in front of gate B, and another six to eight pickets were in front of gate C. Other pickets were in the vicinity. As one vehicle stopped, five pickets walked back and forth in front of the car. After they cleared the car, the car accelerated to leave and Van Lydegraf turned and walked to the passenger side of the car. Van Lydegraf hit the car with his picket sign, and then asked George, who had a camera with him, if he had gotten a picture.

Much of George's testimony was substantiated by that of union witness Angel Garcia. Garcia testified that he was one of the picketers at gate B on June 26 when George was there. He stated that there were even more pickets at each gate than George had said. Garcia testified that seven or eight pickets were in front of gate B and another seven or eight pickets were in front of gate C. Garcia further testified that there was a line of cars in the street and that the police were instructing picketers to keep moving. Garcia stated, however, that the picketers did not try to stop cars at the gates.¹¹

George is credited, and it is found that subparagraph 7(d) of the complaint is proved.

10. Wilson testified that he left the plant area through gate B at approximately 3:30 p.m. on June 28. He said seven or eight picketers were at that gate, among which were Popp and Joe Garcia. He said Garcia pounded on the hood of his car with his fist, and cursed at him. Wilson testified that at on about 4:45 p.m. he drove through gate B again to get his paycheck. He said Garcia pounded on his car again, and the picketers held him up. When they finally let him through, he parked in lot B and walked back through gate B and through gate C to get his check. Garcia grabbed him arm, and Wilson struggled to get free. Popp hit him on the back with a picket sign. Wilson kept walking, and eventually got into the plant through gate C. He had a swelling across his back and below his neck.

Union witness Popp was not specifically asked about this incident, but denied ever striking anyone with a picket sign. Garcia admitted he was on the picket line, but testified that he did not see Popp strike Wilson.

Wilson is credited, and it is found that the allegations of subparagraph 7(zzz) of the complaint are proved.

11. George testified that the Union had a bulletin board which sat on a window ledge of building 16 near the picket line at gate C. George testified that on June 29 he observed and photographed a piece of paper on the bulletin board which contained names and addresses of temporary workers at Menasco, with a notation "These are the names of the scabs that are working at Menasco" and which had a caricature of a man with a lunch pail, with a dagger sticking through his back and coming out his chest.

Union Business Representative Eloy Salazar acknowledged that he knew the list was posted on the bulletin board.

¹¹ As pointed out by the General Counsel, Respondent's picketers habitually caused vehicles going through the gates to slow down or stop, by using a slow gait referred to by one of the picketers, Lloyd Cole, as "the wedding march."

George is credited, and it is found that subparagraph 7(jjj) is supported by the record.

12. Wayne Reed Yohn, a security guard for Wells Fargo Guard Services, testified that he was stationed at Menasco's plant on June 30, when, at or about 11:30 a.m., a blue pickup truck left the plant through gate B, which was being picketed by Joe Guterrez, Angel Garcia, and about four other picketers. As the pickup left, Guterrez struck the back of it with his picket sign. As security guard Yohn tried to photograph the incident with a videotape camera, one of the picketers blocked the camera view, and Guterrez ran across the street, entered his car, and ducked down.

Respondent offered no testimony or evidence relative to this issue.

Yohn is credited, and it is found that subparagraph 7(uuu) of the complaint is proved.

13. William Sorgatz, Menasco's manufacturing superintendent of the second shift, testified that he went to the guard house near gate C about 11:15 p.m. on July 3, when guards called and told him picketers were drinking and getting disorderly. When he arrived there he saw 12 or 13 people, several carrying picket signs. Among those he saw were picket captains Joe Landin and Chuck Frazier, and Jim Lockley. The picketers were throwing firecrackers, which sounded like cannons going off. Several firecrackers hit the guard house, and one exploded about 30 feet from a guard who was walking toward the shack. Sorgatz called the Burbank police. Approximately at midnight or 10 a.m., Sorgatz rode with Pablo Gallegos to a vendor's place of business. As he drove out gate B, he noticed the steering felt sluggish. One picketer said, "Have a happy 4th of July," and the picketers laughed. When he arrived at the vendor's, he found the front tires were half flat. Before he got back to Menasco, the front tires were flat, and the back tires were low. About 2:15 a.m. when Foreman Paul Garcia told Sorgatz that security guards reported flat tires in parking lot B, Sorgatz inspected the lot and found about 20 cars with flat tires. In addition, two cars at the fence near gate F had heavy stones on their hoods, and had shattered windshields. Sorgatz called the police. While the police were there, five gun shots rang out in front of building 16, where picketers were standing, and the police officers moved immediately to that area.

Huey testified that he was on the picket line late that evening, and acknowledged that picketers were throwing rocks and bottles. Huey stated that he could not remember the identity of any of the picketers perpetrating this misconduct. However, Huey contended that people in uniform, whom he could not recognize because it was dark, were throwing objects from inside the plant area.

Robert Garcia also acknowledged being present on the night of July 3. He recalled there were "quite a few members" with him, and named Joe Ruiz, Pete Padilla, Vito Ferri, and Rogelio Lopez. He contended that guards were throwing rocks and bottles from the roof of building 17, and further stated that Richard Rauh, Menasco's quality control supervisor, was sitting at the desk in building 17 and could see any rock throwing.

Rauh testified that he did not see security guards throwing anything at strikers.

Landin testified there was "no way" picketers could get through the plant fence on July 3, but Landin subsequently testified differently, and stated there was an opening in the fence between gate B and building 9, of approximately 30 inches. Landin appeared to be an evasive, uncertain, and unreliable witness, and he is not credited.

Sorgatz is credited, and it is found that the allegations of subparagraph 7(dddd) of the complaint are supported by the record.

14. Doren testified: On July 11 he saw Kessler, Van Lydegraf, and picketer Mike Nichols standing on Menasco property at the intersection of the alleys from gates G and H. A large group of picketers at gate G and H caused vehicles entering the plant area to slow down. Nichols and Van Lydegraf then would cause the vehicles to stop, and Kessler would write something on a clipboard he held.

Union witnesses Joe Garcia and Chuck Frazier testified that picket captains were supposed to write down license numbers of cars crossing the picket lines.¹²

Doren was an unusually straightforward, sincere, and convincing witness, and he is credited.

The inference is clear that Kessler was recording license plate numbers, or some identification of persons crossing the picket line. Such action is coercive, and in patent violation of the Act, as alleged in subparagraph 7(iii) of the complaint.

15. Doren and Yohn testified: starting at or about 2 or 2:30 p.m. on July 20, 20 or 25 pickets were in the vicinity of the intersection of First and Cedar Streets and gates B and C, including Kessler, Van Lydegraf, Vito Ferri, Padilla, Huey, Angel Garcia, and Nichols. Ferri and Padilla flashed mirrors into the guards' video cameras, while other picketers spat on the cars going through the gates and called their occupants obscene names. The police arrived and directed some of the pickets, including Ferri and Padilla, to move out of the way of the cars. At or about 3:30 p.m. the strikers were milling around in the area and causing about a 3-minute delay to vehicles which were entering and leaving the plant area, between day and evening work shifts. Among the picketers who then were present were Padilla, Ferri, Rogelio Lopez, and Robert Garcia. At one point Huey requested picketers to come toward gate B, and Kessler told picketers to stick together because they had newspaper and radio coverage. A group of five to eight picketers surrounded a motorcycle driven by employee Dorothy Evans and tried to knock it over, while Lopez bent down and punctured the front tire of the motorcycle. About the same time, Rogelio Lopez slashed the right front tire of a car entering the plant area. That day employees under Doren's supervision changed slashed tires on three or four cars and a motorcycle.

The only testimony or evidence offered by Respondent relative to these incidents was that of Huey, who testified that he heard about Lopez slashing tires but that he did not see the incident. He said he did not recall talking

¹² Recording license plate numbers of nonstrikers is a form of coercion recognized by the Board as a violation of the Act. *General Electric Co.*, 126 NLRB 123 (1960).

with Lopez about slashing tires, but that he did once ask Lopez not to be at the picket line while drinking.

Doren and Yohn are credited, and it is found that the allegations of subparagraphs 7(u), (v), (dd), (nn), and (qq) are proved.

16. Wilson testified that at approximately 4:35 p.m. on July 20 he and Richard Foust were attempting to leave after work through gate B in Wilson's car. Thirty to 40 picketers were in the area, including Rogelio Lopez, Kessler, and Joe Garcia. Garcia, standing with Kessler, was holding a clipboard and taking down license plate numbers. While Wilson was waiting in line for his turn to exit the gate, he saw Lopez follow another employee, yelling, swearing, and gesturing as though he was going to hit the employee. Another striker grabbed Lopez and walked him away. When Lopez saw Wilson, he stuck his hand inside Wilson's car door and kicked the side of the door and called Wilson a "mother fucker," "Son-of-a-bitch," and an "asshole." Wilson started to open the car door and tried to get out of his car. Kessler, standing at the side, tried to start a fight, calling out, "Yeah, baby, you want to fight? Come on, get out." A Burbank police officer came over and told Wilson to get back into his car. Lopez then pulled a pocket knife out of his right back pocket. Wilson told the officer he wanted something done. The police officer told him to get back in the car and leave, which he started to do. As Wilson drove away, Foust told him to stop because someone had spit on him. Wilson saw spit on the windshield and on Foust. Foust tried to get out of the car. A policeman stopped him before he could get out and told the two of them to leave, which they did.

Respondent offered no testimony or evidence relative to this issue.

Wilson is credited, and it is found that the allegations of subparagraph 7(pp) are proved.

17. The night of July 20 was a particularly violent one, and gave rise to several of the allegations of the complaint. The summary herein is based on the testimony of Rauh, Sorgatz, Doren, and security guard Jaime Puig. Respondent's testimony relative to these incidents was limited, as discussed below.

In the early evening of July 20, as it grew dark, more picketers arrived to augment those already present; in the late afternoon there had been 30 to 40 in the area. The picketers began to explode firecrackers and throw beer bottles and rocks at persons in the plant area. Firecrackers continued to be thrown throughout the evening. Five guard dogs and seven handlers entered Menasco property at approximately 7:45 p.m.¹³ Picketers in the

area of lots B and C began shouting at the handlers, saying "Hey fucking nigger, bring your shithead dog out here we'll kick your ass," and attempting to provoke the guards into letting the dogs loose. Sorgatz helped the guards unload the dogs near the guard shack, some 30 to 40 feet from the picket line. He saw 35 to 50 people (including Ferri, Padilla, and Rogelio Lopez) in the vicinity of First and Cedar. Picketers were yelling, jumping up and down, using abusive language, and walking back and forth holding beer cans. As the dogs were being unloaded, Landin came around the corner of building 16 with a rifle, and pointed the gun at a guard and the dogs. He said he was going to shoot and kill the dogs and get the "big, black nigger" that had them. Rauh yelled to the guards to call the police, who arrived shortly thereafter. Meanwhile, Landin stood with the gun for 5 minutes. Puig was sent to the top of building 16, but left when strikers saw him, and began to throw things at him. In response to a report that someone was trying to break in through gate K, Puig went to building 17. To reach that building, he and security officer Miller used a plywood board as a shield against objects being thrown by picketers. As Puig ran to gate K, he observed someone trying to force the chain off, and removing the stripping from the fence. Strikers called him obscene names, and one yelled "There he is" and "You'll never get out of here alive. There's about 50 of us out here." At 9:15 p.m. Puig got a motorcycle helmet from his car and wore it for protection until he left at midnight. The helmet saved him from injury later, when a beer bottle hit him on the head. At 11:30 p.m., one of the security guards with a dog on leash reported to Sorgatz that he wanted to leave the parking lot because of the rocks and bottles being thrown at him. While he and Sorgatz talked, a beer bottle flew past Sorgatz' head. Bottles and rocks pelted the area. Sorgatz directed the guard to a more protected area. Between 11:30 and midnight, while Sorgatz was taking a telephone call in the guard shack, several large masonry rocks came through the windows, and Sorgatz told the guards to evacuate the area to a safer position. At approximately 2 or 3 a.m. on July 21, Rauh walked to the sidewalk near parking lot C to wait for his wife, who usually picked him up after work. More than 20 picketers were on the sidewalk, including Landin, John Herman, Tom Perez, Padilla, Ferri, and Bill Acuirre. Herman, Perez, and Landin ran up to Rauh and told him to get back into the plant, that he did not belong there. As Rauh began to explain that he was looking for his wife, Herman threw a cup of sand in Rauh's face, causing eye irritation which remained the next day. Police officers grabbed Herman, but Rauh did not press charges against Herman because the latter was drunk, and they had worked together for 16 years. Huey and Salazar arrived soon after this incident.

Doren arrived at the plant before 5 a.m. on July 21, and inventoried the damage to the Menasco facility. Glass, rocks, and debris filled parking lot C, extending 70 to 75 feet inside the fence. There were broken windows in the guardhouse and dented automobile hoods in parking lot B. Windows were broken in building 16, and asphalt lay inside the room. Gate K, between buildings 16

¹³ In its brief, Respondent graphically describes the guard dogs as vicious, drooling beasts brought to the premises to frighten and provoke picketers, and contends that events of the night of July 20 resulted from appearance of the dogs. The record does not support that contention. A large group of picketers already had assembled by the time the dogs arrived, and some violence already had occurred, as discussed above. The dogs were on leashes, with one handler for each dog, and they were used to patrol the perimeter of the plant area. The dogs were confined to a truck upon arrival, and were unloaded within the fenced-in area of the plant. There is no evidence that the dogs were out of hand at any time, or lunged at, or were used to frighten or intimidate, any picketer. It is found that the presence of the dogs did not provoke or cause the violence of the picketers on July 20 or at any other time.

and 17 (to which Puig had run the night before), was pushed in and had to be rehung, and strips had been pulled from the fence. The water cooling tower had been shut off, and the fence cut. Windows in the adjacent Mobil station were broken. The main water supply to building 23 had been cut off, creating the possibility of an explosion in the area.

The only evidence presented by the Union relative to the night of July 20 was testimony about the presence of guard dogs, and the testimony of Landin. Landin said he was acting picket captain on the line that night. He acknowledged being on the picket line when the dogs were being unloaded, but denied pointing a gun at a dog or a person. Landin denied having a weapon or a firearm that night, but acknowledged that a police officer had taken a BB gun from him.

Respondent did not deny the damage to the Menasco facility, nor did any witness claim he was provoked into throwing rocks and bottles because of the presence of guard dogs. Robert Garcia acknowledged being present when Rauh said sand was thrown in his eyes, but said he did not see anyone throw sand.

Rauh, Sorgatz, Doren, and Puig¹⁴ all were calm, sincere witnesses whose demeanor instilled confidence in their truthfulness. They are credited, and their versions of incidents discussed herein are accepted as factual.

It is found that the allegations of subparagraphs 7(qq), (mmm), (nnn), (sss), (bbbb), (cccc), and (y) of the complaint are proved.

18. Doren testified that in the early afternoon of August 3 Kessler, Huey, and Van Lydegraf were at the intersection of First and Cedar, picketing with approximately 100 picketers. Kessler and Huey wore ribbons, and appeared to be directing the picketing in such manner as to prevent entry into the plant area.

Daniel Ireland, a security guard,¹⁵ testified that at or about 2 p.m. on August 3, he watched as approximately 100 persons, half of whom carried picket signs, blocked traffic at Menasco's gates B and C during arrival of the second shift. Ireland stated that, as one car approached the gate, Kessler said something to the effect of "Let's go; let's get him, guys" or "Here's that hippy. Let's get him," at which time five or six picketers surrounded vehicles and made threats. Ireland further testified that on the same day he and Bruce Cramer, another security guard, were at the intersection of the alleys from gates G and H, when Rogelio Lopez called out to Ireland, "You asshole, I'm going to come after you." As Ireland was filming 40 yards from the picket line Cramer called, "Let's go, Dan." Ireland looked up, and saw four strikers on Menasco property, moving slowly on foot down the alley toward him in a way that would result in his being surrounded and backed up against the wall behind him. Ireland and Cramer left the area.

¹⁴ As discussed *supra*, there is no evidence that Menasco hired a "goon squad," as alleged by Respondent, and Puig provides one clear refutation of that allegation. Puig is small in stature, light in weight, soft of voice, and obviously not a person of great physical strength. No security guard was armed.

¹⁵ Ireland was of conservative, calm appearance, quite different from what one would expect to see if he had been a member of a "goon squad."

Doren testified that a little after 3 p.m. on August 3 the pickets moved to the area of gates G and H, where they were massing in front of cars, surrounding and holding up cars, and hitting the cars with their hands.

Respondent offered no testimony or evidence relative to the incidents of August 3.

Doren and Ireland are credited, and it is found that the allegations of subparagraph 7(cc) of the complaint are supported by the record.

19. Doren testified that on August 5 at 4:45 a.m. Jose Castro and approximately six picketers were at gate B. Doren said he drove up to gate B, and the pickets walked back and forth in front of his car for several minutes, holding him at the gate. He stated that someone in a car parked on First Street flashed a spotlight in his eyes, at which time Castro moved to the side of his car holding a white cup, and poured a liquid on the car. The pickets then let him through. Doren said he found that the paint on his car was bubbling in two places, and that the car had to be repainted.

Union witness Castro testified that he was picket captain at gate B that morning, and that Doren accused him of vandalism and had him arrested. Castro did not deny throwing anything on Doren's car, but said he went to court with three witnesses, who proved him not guilty.

Doren is credited, and it is found that the allegations of subparagraph 7(oo) are proved.

20. Yohn testified that at approximately 6 a.m. on August 31 he and temporary employee named Danny Cosbett were in an alleyway on Menasco property near the rear gate when two rocks came over the 4-foot wall, narrowly missing Cosbett. Yohn said he ran around the corner of the wall, and saw Van Lydegraf and picketer John O'Callaghan running away from the area and a third picketer some distance away, near gate E. No one else was in the vicinity.

O'Callaghan acknowledged that he, Van Lydegraf, and Paul Mazinski were at the plant at the time of the incident, and that a police officer asked if they were not there that morning to picket, but rather, in order that Menasco would "waste some more film" taking pictures of them.

Yohn is credited and, based on his testimony, which partially is supported by O'Callaghan, it is inferred that one of the three picketers threw the rocks. No other conclusion would be reasonable.

It is found that the allegations of subparagraph 7(ttt) are proved.

21. Yohn testified that on September 5 at approximately 11:30 a.m. employee Greg Callaghan drove toward gate B but was stopped by Joe Garcia, who was there with other picketers. Yohn further testified that when Callaghan stopped, Garcia stood motionless in front of the car for some time. Finally officer Barcus of the Burbank police walked over and asked Garcia to move. Garcia exchanged words with officer Barcus, spit on the car, and moved out of the way. Callaghan got out of his car and started walking toward the policeman, but another picket, John Grohol, walked over from Callaghan's blind side and repeatedly punched Callaghan until he fell to the ground. Garcia picked up Callaghan and

walked him to the other side of the car. The policeman arrested Grohol.

Garcia acknowledged being on the line that day, and further acknowledged that Grohol hit Callaghan. However, Garcia claimed that Callaghan sat in his car, eating a sandwich, and talking to them.¹⁶ Garcia acknowledged that he may have spit on Callaghan's car. Yohn partially is supported by Garcia, and he is credited. It is found that the allegations of subparagraph 7(www) of the complaint are proved.

22. Yohn testified that on September 7 at approximately 5:45 a.m., while employee Richard Mavritte was entering the plant area through gate H, picketer Brower struck the windshield of Mavritte's car with such force that the sign was shattered. The car was going 2 or 3 miles per hour at the time.

Respondent offered no testimony or evidence concerning this issue, and Yohn is credited.

It is found that the allegations of subparagraph 7(ww) of the complaint are proved.

23. James Hanson, who was the first union striker to return to work, testified that 4 days after he returned on September 21 he heard his name called as he was driving into gate G, about 5:45 a.m., and stopped his car. Hanson testified that Van Lydegraf kicked the side of his car and called him a "son-of-a-bitch." As he accelerated to get into the plant area, he heard a noise and saw a rock fly over the front of his car after hitting the rear of the car. He did not see who threw the rock, but saw John O'Callaghan standing behind the car.

O'Callaghan testified, but said nothing about this incident.

Respondent offered no testimony or evidence relative to the incident.

Hanson is credited, and it is found that the allegations of subparagraph 7(ss) are proved.

24. Mickey Cumpston, Menasco's production control supervisor, was entering gate G on September 28 at approximately 6 a.m. with Paul Wade and another employee also in the car. Yohn was inside the gate. Cumpston, Wade, and Yohn testified relative to this incident.

As Cumpston's car came through the gate, 10 picketers were 3 feet or farther from the car, while Steve Van Lydegraf stood 6 inches to a foot off the right front fender and made no attempt to move. Van Lydegraf pulled a metal object from his pocket, took two steps toward the passenger side of the car, and put his hand alongside the car, resulting in a scraping sound. Cumpston stepped out of his car, and accused Van Lydegraf of scratching his car. Van Lydegraf did not reply or deny the allegation. Inspection of the car revealed a 3- or 4-foot scratch.

The Union presented no testimony or evidence on this incident, and the three witnesses are credited.

It is found that the allegations of subparagraph 7(rr) of the complaint are proved.

25. Yohn testified that at or about 2:45 p.m. on September 28 approximately 50 picketers were milling around in the vicinity of gate B, including picketers Kessler, Padilla, Joe Garcia, Ferri, Huey, Van Lydegraf,

and Rogelio Lopez. The number of picketers increased to about 75 by 4:15 or 4:30 p.m. There was considerable milling around in the intersection of gates B and C. Most of the picketers were not carrying signs, but some were. At approximately 4 or 4:30 p.m. 20 or 25 picketers were walking in front of cars at gate G, with the result that about 10 cars were waiting to pass through the gate. Among those picketers were Padilla, Ledoux, Juan Chavez, Jaramillo, Dunlap, and Kahl. Padilla said the employees as they left, "We are going to get you at home, we're going to follow you, we are going to follow you home, we will take care of you later." About 20 minutes later, Yohn said, he observed picketers Padilla and Ledoux kick the rear section of a Plymouth automobile leaving gate H, and picketer Jaramillo throw a bottle at the car. Yohn testified that also at gate H, at or about this time, as he took pictures of the scene with his video camera, several picketers surrounded him, pushed and elbowed him, and told him they were going to put him 6 feet under, and that they were going to get him later. Yohn further testified that at or about 5 p.m. on September 28 between gates G and H, picketer Juan Chavez walked toward him and told him he was going to follow him home and "kick his ass." Chavez then pushed Yohn. Yohn told Chavez not to do that again, and to let him alone.

Chavez testified that he was picketing at gate H from 3 to 6 p.m. on September 28 and saw no guards on that picket shift. He further denied having any conversation with any guards on that day and denied threatening or shoving any guard on that day. No other testimony or evidence relative to these incidents was offered by Respondent.

Chavez was not a convincing witness, and his denials appeared unworthy of credit; they are given no credence.

Yohn is credited, and it is found that the record supports the allegations of subparagraphs 7(ee), (uu), (vv), and (vvv) of the complaint.

26. Hanson testified that on September 28 at 5:15 or 5:30 a.m. he left the plant area through gate B, and saw picketer Ferri walking back and forth in the crosswalk at the street corner. Hanson testified that he stopped 8 feet from the stop sign, and Ferri walked to the side of his car, hit the window, and kicked the door, denting it. A police officer asked if Hanson wanted to prefer charges, and Hanson had Ferri arrested.

Respondent offered no testimony or evidence relative to this incident.

Hanson is credited, and it is found that the allegations of subparagraph 7(tt) are supported by the record.

27. Hanson testified: on Friday, October 5, at 8:30 p.m. he had a conversation with his landlord, in which the landlord informed him that two men had visited earlier that evening and had asked if Hanson lived there. The landlord said one of the men gave the name "Eloy." On October 8, 3 days later, Hanson saw Joe Garcia, together with one or two other picketers, on the picket line at gate B at 5:45 a.m. Garcia walked over to Hanson and told him he was sorry he had missed him on Friday.

¹⁶ Yohn said he thought Callaghan's window was raised, and that Callaghan said nothing.

Garcia said Hanson should stay home more often, and that he was on Garcia's list.

Yohn testified that he heard Garcia tell Hanson, "I'm going to come to your home tonight and get you, sucker."

Salazar and Garcia denied visiting Hanson's home. However, Garcia testified that Hanson's house in Altadena once had been pointed out to him when he was with Van Lydegraf. Garcia further denied that he ever threatened to kill Hanson. However, he acknowledged calling Hanson a "son-of-a-bitchin traitor," and that he had once told Hanson he would "beat his butt."

Hanson and Yohn are credited, and it is found that subparagraph 7(ffff) of the complaint is proved.

28. Yohn testified that, on October 17 at 5:30 to 5:40 a.m. at gate H, Van Lydegraf and Steve Paysinger stood beside the gate and picketers Gary Cook and Michael Nichols stood in front of a pickup truck attempting to enter the gate. Yohn testified that after Cook and Nichols had stood in front of the truck for several minutes without moving, the driver backed up and tried to enter the gate at another angle, but Cook and Nichols moved in front of his truck again.

When another vehicle drove up, Nichols and Cook separated, one standing in front of each vehicle. After 15 minutes they let the truck in, but Nichols punched the car window and gestured with his middle finger. Another vehicle, driven by John Rankin, drove up and Nichols and Cook did the same thing to that vehicle. Cook was holding a stick about 2 feet long, which had no sign attached. He put his hands on Rankin's car and let the stick drop, hitting the hood.

Cook acknowledged that he and Nichols had stood in front of cars and blocked their entrance into the plant for several minutes. He also acknowledged that police came up during the time that he and Nichols were there, and told them to keep moving. However, Cook alleged that the reason he and Nichols had blocked traffic in the driveway was that a couple of cars had "brushed" them—that is, come too close, in his estimation. Cook stated that cars were "coming in and taking sideswipes at us." Later, on cross-examination, Cook denied that he had testified that cars had "sideswiped" him. He also acknowledged that none of the cars touched either of the picketers. He further acknowledged that he and Nichols yelled obscenities at the cars. However, he denied that either he or Nichols at any time struck any of the cars with picket signs. Cook's testimony relative to the presence of Van Lydegraf was vague and inconsistent.

Cook's denials and his testimony appeared doubtful.

Yohn is credited, and it is found that the allegations of subparagraphs 7(p) and (q) of the complaint are supported by the record.

B. Respondent's Defense

1. Factual considerations of an individual nature

The fact that actions of individual picketers were improper or violent, and were perpetrated by individuals against Menasco, its employees, and its potential and temporary employees, is discussed *supra*. The record is replete with instances wherein picketers interfered with

ingress and egress at plant gates, threatened nonpicketers, physically assaulted individuals and their vehicles, and attempted to cause damage to personal and real property of nonpicketers and Menasco. Such conduct of picketers, if attributable to the Union, would be coercive and in violation of Section 8(b)(1)(A) of the Act.¹⁷

However, Respondent argued, at hearing and in brief, that the actions of picketers were individual in nature, and were perpetrated in retaliation against actions of Menasco's employees, or Menasco, or in self-defense. Respondent was given full opportunity at hearing to prove that defense, and was permitted to introduce testimony and evidence in its support. Respondent was unable to meet the burden of this defense. In no instance did any witness testify, or show, that a threat or act of violence was in response to a threat or action by another person. No inference of retaliation or self-defense can be based on any testimony or evidence of record.

2. Factual considerations of a group nature

Respondent also argued, at hearing and in brief, that actions by picketers that otherwise possibly could be illegal were taken because of provocation by Menasco, or its representatives.

As discussed *supra*, Respondent's contention that Menasco hired a "goon squad" and other strikebreakers has no support in the record. It is clear that Menasco did no more than it was entitled to do in its economic defense—it hired temporary employees and accepted returning strikers to do production and maintenance work. The fact that some of the temporary employees may have been opportunistic, or may have had criminal records (e.g., Bittaker) is irrelevant, in the absence of other testimony or evidence to support Respondent's defense.

Respondent takes the position that wholesale actions by the picketers, e.g., mass picketing, as well as at least some individual actions by picketers, were justified because of Menasco's provocation of the Union and its members. Much trial time was spent, for example, in discussing the dogs that were used to patrol the inside plant perimeter. As discussed *supra*, use of the dogs was not intended, or carried out, as a provocative measure, but in any event, the Union cannot justify the broad band of violent acts by picketers, over a period of several months and almost always when dogs were not present, on the basis that the dogs were used for a brief period of approximately 2 weeks.

Respondent was permitted to introduce testimony and evidence relating to approximately 20 incidents which, Respondent contended, showed that Menasco provoked the actions of picketers. The record relative to those incidents has been carefully reviewed and considered. At least 10 of the incidents are found to be without proof, or to be unlikely, and are given no credence.¹⁸ However,

¹⁷ *Broadway Hospital*, 244 NLRB 341 (1979); *Teamsters Local 695 (Yellow Cab & Transfer Co.)*, 221 NLRB 647 (1975); *Boilermakers Local 696 (Kargard Co.)*, 196 NLRB 645 (1972).

¹⁸ 1. Landin's contention that Bruene hit an unidentified striker with his vehicle.

2. Gutierrez' contention of a car speeding through the gate, condoned by Hyde.

Continued

er, whether they are true is irrelevant since, as a matter of fact, there is no showing that any of the incidents provoked any of the actions by picketers discussed above.

So far as mass picketing is concerned, the fact of that picketing and the attendant circumstances are described above. It is well established that picketing engaged in by large numbers of strikers, which is calculated to prevent ingress and egress by nonstriking employees and which carries an obvious threat of physical violence to employees who attempted to cross the picket line, constitutes coercion.¹⁹ Those factors, and their attendant violation of the Act, are found herein.

Finally, Respondent contends that Menasco condoned violent acts by its representatives or employees, and that the condonation ripened into provocation of the picketers. However, that argument is without merit. The provocation was not shown to exist, so far as the allegations of the complaint are concerned. Further, the only substantial testimony or evidence of condonation was the contention of Joe Guterrez that Hyde condoned a driver speeding through a gate and endangering picketers.²⁰ Hyde denied that allegation, and Hyde is credited.

3. Respondent's responsibility for acts of picketers

A basic question is whether individual picketers, when engaging in the misconduct and mass picketing discussed above, were acting as agents of Respondent, thereby bringing Respondent within the ambit of responsibility for those actions.

Respondent argues that union officials instructed picketers to conduct themselves in proper manner, and to carry out their picketing in a "peaceful" manner. Salazar, Huey, Kessler, and others testified to that effect. However, assuming *arguendo* that such instructions were given, it is not the instructions that are in issue — it is the actions of the picketers, and whether they were agents of Respondent, that control the issue. Further, there is but scant evidence that Respondent attempted to, or did, enforce its instructions, even if they were in fact given as testified to. There is testimony that, in a few instances, picketers were reprimanded for their picket line conduct, or were sent home, or both, but those instances were far

outnumbered by instances of misconduct and mass picketing in the presence, and under the direction, of individuals alleged to be agents of Respondent. If such individuals were agents of Respondent (discussed *infra*), the defense concerning instructions is without merit. Further, it is clear that the incidents for which picketers were chastised were not of the same nature as the incidents alleged in the complaint, which Respondent did not disavow or explain to Menasco. Finally, the attitude of the Union toward misconduct suggests that, perhaps instructions were given, and received, as tongue-in-cheek admonitions.²¹ Andrew Brymer, a Menasco employee and a former union member, credibly testified that he attended a union meeting in mid-September at which Salazar spoke to the members and held up a vehicle part for them to see:

Well, he held it up and he said, "For the people that don't know what this is, this is a coil wire. And it was taken off of," I believe he said, "a Dodge automobile belonging to a guy that put in an application at Menasco and was followed over to the Burbank Medical Center for his physical.

"And when he came out to get his car, his radiator had been punctured and the antifreeze had run on the ground, and this wire was missing, so his car wouldn't start."

And he said that, "If this gentleman wants to do some serious negotiating, we will be glad to return this part to it."

Q. Did Mr. Salazar identify the name of the person who had taken this part from the Dodge automobile?

A. No, he didn't.

Q. What was Mr. Salazar's manner of presentation as he related this incident to the audience?

A. It was boastful. Bragging. You know.²²

The record evidence is plentiful that picketers at all times relevant herein were agents of Respondent. Salazar frequently was at the picket line, and in communication with other union officers and picketers relative to the strike and incidents on the picket line. Salazar's conduct at the meeting of union members, discussed above, clearly shows his immersion in the details of picketing, regardless of whose version of the meeting is accepted. As further evidence of that immersion, Salazar testified that he reprimanded Vaughn Brower for picket line misconduct, and furnished bail money on two or three occasions to get Brower out of jail. As discussed *supra*, Huey was an active picketer, and participated in several of the incidents found to constitute misconduct. Huey was president of Respondent, but did not disavow the mis-

3. Chavez' contention that two Menasco employees attacked him and Rogelio Lopez.

4. Alleged swinging by Yohn of pipe at picketers, and scattering of nails by Yohn.

5. Alleged use of street sweeper to frighten picketers.

6. Cole's contention that he was hit three times by vehicles.

7. Garcia's contention of attack by a black man holding a broken bottle.

8. Kahl's contention of being intentionally struck by a vehicle. (It is clear that Kahl, who was intoxicated at the time, caused this accident, or initiated it.)

9. Use of guards dogs.

10. Contention that Wayne Waterfield was intentionally hit by a car. (Waterfield denied this.)

¹⁹ *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Dearborn Glass Co.*, 78 NLRB 981 (1948); *International Nickel Co.*, 77 NLRB 286 (1948).

²⁰ Respondent introduced evidence that the Union and its picket line representatives frequently complained to Menasco about drivers speeding past picketers when going through gates. Assuming *arguendo*, that such is a fact, that fact would not justify the actions by picketers discussed in this decision. Garcia testified that Rauh sat at his desk inside the heat treat building while security guards threw rocks and bottles at picketers. That testimony appeared strained and unlikely, and is given no credence. Rauh's denial of the incident is credited.

²¹ In addition to other indicia of the Union's improper attitude toward actions of the picketers, the testimony of Hyde, partially supported by Joe Garcia, is instructive. Hyde credibly testified that Garcia, in the sight of picketers, refused to accept a court injunction that Hyde attempted to give him, and contemptuously ground the injunction into the dirt with his feet.

²² The denial of this testimony by Salazar and Frank Placentia, Respondent's secretary-treasurer, and their explanation of the incident, appeared strained and unrealistic, and is given no credence, although it is noted that Placentia partially agreed with Brymer.

conduct, or take any action, so far as the record shows, to prevent future misconduct. Placentia testified:

The negotiating committee was the overall strike coordinator and the picket captains had their own shifts to take care of. There was no one assigned to the overall 24 hour shift picketing except for maybe the business representative and myself that would oversee this on a daily basis. But each picket captain that we chose was pretty well qualified to take care of his shift and that is all that — if any coordinating had to be done on all the shifts, normally the negotiating committee would get together and then they would advise me changes to be done.

The record shows Placentia's intimate knowledge of, and participation in, daily picketing affairs. Kessler was a member of Respondent's strike committee and negotiating committee, and according to Placentia, the strike committee was responsible for overall strike coordination. Kessler was a participant in several actions of misconduct described above, and was a prominent or principal force in some of them. Kessler frequently complained to Respondent, on behalf of the parties, about vehicles speeding through the picket line. Van Lydegraf was a picket captain and, according to Salazar and Placentia, picket captains had supervisory authority over rank-and-file picketers.²³ Van Lydegraf was a frequent participant in, and sometimes a leader of, actions of misconduct discussed above. Budd was a member of the strike committee and the negotiating committee, and Budd testified concerning incident numbered 7 above, stating, *inter alia*, that he introduced himself to two people in the car involved, as "a leader of the Union, and I would appreciate it if they would recognize our picket line" On many occasions of misconduct, two or more of these individuals, i.e., Huey, Kessler, Van Lydegraf, and Budd were at the picket line during the same incidents of misconduct.

It is clear from the foregoing, and throughout the record, that conduct on the picket line was the Union's conduct, by reason of the agency relationship between the individuals Salazar, Huey, Kessler, Van Lydegraf, and Budd, and the Union.²⁴

4. The defense of unclean hands

Respondent argued at trial, and in brief, that Menasco's employees, with Menasco's knowledge and condonation, committed acts of misconduct against picketers, and that, therefore, Respondent's acts of misconduct should be excused. As discussed above, some of Menasco's employees may have committed acts of misconduct against picketers, but most of such acts alleged by Respondent were found to be not supported by the record. Further, there is no evidence that Menasco solicited, ini-

tiated, participated in, or condoned any of those acts. However, assuming *arguendo* that all the acts were committed by employees, and later were condoned by Menasco, that fact would not relieve Respondent of its duty to see that the picketers refrained from coercing non-strikers. Whether or not a complaint should be filed against Menasco for any alleged acts of misconduct, by it or its employees, is a matter for the Board's determination, and is irrelevant to the case herein.²⁵ In a long line of cases, the National Labor Relations Board has maintained that the "Clean Hands" doctrine of equity courts does not apply to Board proceedings. Possibly, if an employer incites employees to violence during a strike (a fact not shown by this record), the Board may decline to permit its process to be invoked,²⁶ but seldom has the Board found proffered evidence sufficient to support a defense to unlawful conduct by the charged party.²⁷

This defense is found to be without merit, both on the facts and the law.²⁸ The reason for the rule succinctly was stated by the Board in *Sunset Line & Twine Co.*, 79 NLRB 1487, 1492, fn. 6 (1948):

Unlawful conduct on the part of the Company, if established, would neither extinguish the right of its employees, to be free of union restraint and coercion, nor justify the Respondent Unions' alleged infringement of that right. See *Amalgamated Utility Workers v. Consolidated Edison Company of New York, Inc.*, 309 U.S. 261; *N.L.R.B. v. Fickett-Brown Mfg. Co.*, 140 F. (2d) 883 (C. C. A. 5).

C. Resignations of Employees from the Union, and Their Fines by the Union

As noted above, 21 employees had returned to work by January 7, 1980, and all of them had submitted resignations either prior to returning, or soon thereafter. The Union's subsequent charging and fining of the 21 employees was carried out pursuant to the following provision of the Union's constitution:

Improper Conduct of a Member

Section 3. The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided.

Accepting employment in any capacity in an establishment where a strike or lock-out exists as rec-

²³ Joe Garcia, Jose Castro, Virgil Popp, Joe Landin, Charles Frazier, Richard Kahl, Lloyd Cole, and Wayne Waterfield also were picket captains and participated in many of the acts of misconduct described above. They are found to have been agents of Respondent at all times relevant herein.

²⁴ *Teamsters Local 695 (Yellow Cab & Transfer Co.)*, supra; *Boilermakers Local 696 (Kargard Co.)*, supra; *Teamsters Local 115 (Continental-Wirt Electronics)*, 186 NLRB 56 (1970).

²⁵ This point was the basis for Respondent's unsuccessful interim appeal of the case herein to the Board. See *Roy Stone Transfer Corp.*, 100 NLRB 856 (1951).

²⁶ *Electrical Workers Local 1150 (Cory Corp.)*, 84 NLRB 972 (1949).

²⁷ *Union Independiente de Empleados de Servicios Legales de Puerto Rico (Corporacion de Servicios Legales de Puerto Rico)*, 249 NLRB 1044 (1980); *Thayer, Inc.*, 125 NLRB 222 (1959); *Waycross Machine Shop*, 123 NLRB 1331 (1959).

²⁸ *Communications Workers Local 4372 (Ohio Consolidated Telephone Co.)*, 120 NLRB 648 (1958), enfd. as modified 226 F.2d 823 (6th Cir. 1959), affd. as further modified 362 U.S. 479 (1960).

ognized under this Constitution without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment for the duration of the strike or lock-out if the resignation occurs during the period of the strike or lock-out or within fourteen (14) days preceding its commencement. Where observance of a primary picket line is required, resignation shall not relieve a member of his obligation to observe the primary picket line for its duration if the resignation occurs during the period that the picket line is maintained or within fourteen (14) days preceding its establishment.

Section 7 of the Act guarantees to employees the right to refrain from engaging in concerted activity, including the right to refrain from participating in a strike.²⁹ That right may be abridged by union rules imposed on its members, prohibiting them from crossing picket lines. However, such a rule is applicable only to members, not former members. Once a member resigns from the union, he is beyond the union's reach.³⁰

Section 8(b)(1)(A) of the Act provides, *inter alia*, "That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." That right, however, cannot be used unduly to restrict, or to prohibit, the right of a member to resign from union membership.³¹ The same union constitutional provision that is involved in this case was considered by the Board in *Dalmo Victor*.³² In holding that post-resignation fines of employees were in violation of Section 8(b)(1)(A) of the Act, the Board reiterated its holding in *O.K. Tool*:³³

Balancing an individual's right under Section 7 to refrain from concerted activity following resignation from a union against that of a union to maintain solidarity during a strike, we conclude that the latter must give way. Conformity may be none too high a price for the benefits of union membership. But the choice, at least in the absence of reasonable restrictions on resignation, is the individual's to make, not the union's. Should he choose to resign and to forgo the benefits of union membership, the union may not nonetheless seek to exact conformity without regard to the individual's Section 7 rights.

Whether the Lodge might lawfully have placed reasonable restrictions on the circumstances in which a member could resign, and have enforced those restrictions and strikebreaking sanctions against full members who returned to work during a strike, is a question which is not raised by the fact of this proceeding. We hold only that a union may not levy, or threaten to levy, court-collectible fines against a former member for exercising his Section

7 rights following lawful resignation from the union.³⁴

Dalmo Victor was remanded to the Board for further proceedings, but as of this writing the Board has not changed its position, and its decision remains as controlling precedent in the case herein.

However, as the General Counsel and the Charging Party contend, whether or not the Board alters its *Dalmo Victor* position is not controlling, in view of the Union's failure to notify the 21 employees who were fined, that there were restrictions on resigning from the Union. Whether or not the restrictions may be improper need not be reached, since the employees never were advised of them. That matter is discussed below.

Testimony and evidence of the 21 employees who resigned was presented at the trial in order to establish the fact of resignations. That testimony and evidence was not contradicted by Respondent, and is credited. It is found that all 21 employees did, in fact, submit resignations. As discussed elsewhere, some resignations were in writing and some were oral. However, all were effective communications. Oral resignations are effective unless precluded by union rules;³⁵ no such preclusion was shown by Respondent.³⁶

Resignations from a union generally are effective upon their receipt by the Union.³⁷ The following employees credibly testified, and it is found, that they resigned from the Union prior to returning to work: Barclay, Stampfl, Gallegos, Bertram, Guevarra, Meador, and Hanson.³⁸

The following employees credibly testified, and it is found, that they resigned in writing after they returned to work: Aragon, Avila, Baker, Bolduc, Byrmer, Crawford, Jenrich, Martinez, Ricci, and Witt. As discussed elsewhere, the Union's fines of these employees, \$10 per day for each day of an alleged violation, are of a continuing nature and would apply to all employees who resigned after returning to work, each day the picket line was crossed to come to work after the effective dates of resignations, i.e., the dates the resignations were received by the Union.³⁹

Four other employees resigned in somewhat different manner. Collins testified that he mailed a letter of resignation on Monday before the Tuesday he returned to work. Cuneo holds a return receipt dated the same day he returned to work. Hawk testified that he sent a mailgram to the Union on Wednesday before his return to work on Thursday. Olson holds a mail receipt dated the Saturday before his return to work on Monday. Collins, Cuneo, Hawk, and Olson are credited. The Board has a 1-day presumption of mail delivery between nearby cities. Respondent introduced no evidence to rebut this

²⁹ *Machinists Lodge 405 v. NLRB*, 412 U.S. 84 (1973).

³⁰ *NLRB v. Textile Workers Local 1029 (International Paper Box Machine Co.)*, 409 U.S. 213 (1972).

³¹ *Scofield v. NLRB*, 594 U.S. 423 (1969); *NLRB v. Textile Workers Local 1029 supra*; *Sheet Metal Workers Local 29 (Metal-Fab, Inc.)*, 222 NLRB 1156 (1976).

³² *Machinists Local 1327 (Dalmo Victor)*, 231 NLRB 719 (1977), enf. denied and case remanded 608 F.2d 1219 (9th Cir. 1979).

³³ *Machinists Local 1994 (O.K. Tool Co.)*, 215 NLRB 651, 653 (1974).

³⁴ Based on the record, it is clear that the case herein involves, as did *Dalmo Victor*, "court-collectible fines."

³⁵ *Carpenters Local 1233 (Polk Construction Co.)*, 231 NLRB 756 (1977).

³⁶ The Union's constitution provides for withdrawals, but that is a matter separate and apart from resignations. *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1098, fn. 30 (1979), and cases cited therein.

³⁷ *Hendricks-Miller Typographic Co. supra*.

³⁸ The resignations of Guevarra and Hanson were oral, by telephone calls to Salazar.

³⁹ These dates are set forth in the Remedy section, *infra*.

presumption. Thus, it is found that the Union received the resignations of Collins, Cuneo, Hawk, and Olson on the same days they returned to work. In the absence of affirmative evidence establishing that each letter was received before the employee in question crossed the picket line to work, the resignations were not effective until the close of business on the day of receipt.⁴⁰ It is found that the resignations of Collins, Cuneo, Hawk, and Olson became effective at the close of business on their respective return-to-work dates.⁴¹

Respondent argues that resignations of the 21 employees were not effective as a matter of law because of restrictions set forth in the Union's constitution, quoted above. The fact that all 21 resignations occurred during the strike is not in dispute. However, in order for such a restriction to be applicable to employees it must be communicated to them.⁴² Section 7 of the Act guarantees to employees the right to engage in concerted activities for the purpose of collective bargaining, and also the right to refrain from such activities. A waiver of those Section 7 rights must be clear and unmistakable to be effective.⁴³ There was no such waiver in this case. The relationship between the 21 employees and the Union was a loose one, imposed upon the 21 employees by reason of their employment and the union-security clause of the contract between Menasco and the Union. All 21 employees credibly testified that their relationship with the Union was quite casual, that they never had been initiated into the Union, that neither they nor anyone they ever saw had been sworn in as members, that they never had received or read the Union's constitution, and that the constitution's restriction on resignations never had been brought to their attention, or discussed with them.⁴⁴ Further, there is no evidence that the Union did anything to inform the employees of restrictions on resignations, even though, according to the credited testimony of Gallegos and Guevarra, those two employees informed Salazar in advance of their intended resignations. Salazar did not deny the two conversations. It may well be, as Respondent argues, that 16 of the 21 employees signed union membership applications which contain an agreement to abide by the Union's laws, but that fact alone does not charge the employees with knowledge of the Union's restriction on resignations.⁴⁵

It is found that the 21 employees did not know of the Union's constitutional restrictions at the time they resigned, and that, therefore, they did not waive their Section 7 right to resign from the Union. Under such circumstances, the Union violated Section 8(b)(1)(A) of the

Act when it charged and fined the 21 employees.⁴⁶ The fines of those who resigned prior to returning to work were unlawful in their entirety. The fines of those who resigned after coming to work are unlawful to the extent that their fines apply to periods after the Union received the resignations. The fines of the remaining four employees, discussed above, are unlawful to the extent that they apply to periods after the close of business on the respective dates they returned to work.

D. Respondent's Defense on the Fines Issue

Respondent contends: (1) the fines should be held valid, since resignations from the Union were solicited by Menasco, or Menasco required such resignations as a condition of employment, and (2) no loss to employees would be involved even if the fines are held valid, since Menasco promised to defend the employees' fines by using its own funds and facilities and, even if the fines ultimately were held valid, would pay those fines.

So far as the first argument is concerned, at least five witnesses testified that they resigned from the Union of their own free will and never discussed the subject with any representative of Menasco. At least five others testified that Menasco representatives told them that it was the employees' own decision to resign or not to resign from the Union. Six employees testified that they were told by Menasco representatives that resigning would be a good idea, or words to that effect. Only one employee, James Meador, testified in support of Respondent's position when he stated that a managerial employee told him he "had to resign from the Union in order to come back to work." Meador's testimony, which refers to a statement by Menasco's representative made after the Union's notification to employees that they were charged and would be tried, stands alone and does not show a design or course of action on Menasco's part to interfere in employees' union affairs. The singular nature of Meador's testimony supports a conclusion, based on the ambiguous nature of the alleged remark, that the comment was an innocuous one, free of coercion or suggestion. Clearly the manager who made the remark would have known that a union member could not both work for Menasco and retain his union membership without being subject to expulsion from the Union or to a heavy fine. That isolated remark, placed in context with the experience of the other employees involved with the fines, is inadequate for a finding that Menasco interfered with employees' choice or their relationship with the Union. Certainly, as argued by the General Counsel, there is no evidence that Menasco was involved in a scheme to entrap the Union into committing unfair labor practices by fining returning strikers.⁴⁷ Further, as pointed out by the Charging Party, even assuming *arguendo* that Menasco attempted to influence employees and cause their resignations from the Union, that fact would not constitute a defense to an 8(b)(1)(A) allegation based on illegal union fees.⁴⁸ If

⁴⁰ *Hendricks-Miller Typographic Co.*, *supra*, 1082, 1088.

⁴¹ *Carpenters (Campbell Industries)*, 243 NLRB 147, 148, fn. 5 (1979); cf. *Hendricks-Miller Typographic Co.*, *supra* at 1082 and 1088.

⁴² *Teamsters Local 439 (Loomis Courier Service)*, 237 NLRB 220 (1978); *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, 227 NLRB 1045 (1977); *Machinists Lodge 1871 (General Dynamics Corp.)*, 231 NLRB 727 (1977), *enfd.* 575 F.2d 54 (2d Cir. 1978).

⁴³ *Timken Roller Bearing Co. v. NLRB*, 325 F.2d 746 (6th Cir. 1963).

⁴⁴ Testimony of several union witnesses that copies of the union constitution are kept on display in the union hall, readily accessible to and for the use of members, is not credited. In any event, even if credited, *arguendo*, that fact would be given no weight under the circumstances discussed herein.

⁴⁵ *Auto Workers Local 1384 (Ex-Cell-O Corp.)*, *supra*.

⁴⁶ *Electrical Workers (IUE) Local 1012 (General Electric Co.)*, 187 NLRB 375 (1970).

⁴⁷ *Sheet Metal Workers Local 170 (Able Sheet Metal Products)*, 225 NLRB 1178, 1181 (1976).

⁴⁸ *Sheet Metal Workers Local 170*, *supra*; *Oil Workers (Gordy's, Inc.)*, 238 NLRB 1227 (1978).

such a state of affairs existed, the logical and proper course for the Union would be to file a charge with the Board.

So far as Respondent's second argument is concerned, the Board consistently has held that the bringing of charges by a union in such a case as this is coercive, whether or not fines are imposed as a result of those charges.⁴⁹ Further, the fact that fines may be paid by the employee is immaterial.⁵⁰

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

It is found, above, that the 21 former union members submitted their resignation to the Union in three categories. It is recommended that the rescission of fines be ordered as follows:

(a) For the following employees who submitted their resignations to the Union prior to returning to work, their fines must be rescinded in their entirety:

Dale A. Barclay	Phillip D. Bertram
Juvenio Gallegos	Miguel T. Guevarra
James Hanson	James Meador
Frank Stampfl	

(b) For the following employees who submitted their resignations to the Union after their return to work, their fines must be rescinded effective at 12:01 a.m. on the dates shown opposite their names:

Cristobal Aragon	Jan. 10, 1980
Daniel Avila	Dec. 14, 1979
Charles Baker	Oct. 13, 1979
Isidore Bolduc	Dec. 3, 1979
Andrew S. Brymer	Dec. 7, 1979
Estill B. Crawford	Jan. 8, 1980
Roger Jenrich	Dec. 27, 1979
Edward Martinez	Oct. 19, 1979
Salvatore Ricci	Dec. 27, 1979
James Witt	Nov. 14, 1979

(c) For the following employees who submitted their resignations to the Union after their return to work, their

fines must be rescinded effective at 12:01 a.m. on the dates shown opposite their names:

William Collins	Dec. 12, 1979
Anthony Cuneo	Nov. 20, 1979
Leon V. Hawk	Nov. 30, 1979
Erling Olson	Dec. 11, 1979

Any and all money paid by any of the above-named employees to the Union by reason of the fines imposed upon them, to the extent the payments are not in accord with the schedules set out above, must be refunded, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

As found above, the fines illegally assessed by Respondent against 21 former members of the Union are of a continuing nature. Further, notice is taken of the pendency before the Board of an 8(b)(1)(A) charge filed by Menasco in Case 31-CB-3971, alleging that former union members other than those involved in this case illegally have been fired by Respondent. Finally, the illegal acts of the Union described above are of a pervasive nature, committed over a period of several months. In view of such facts, it is found that a broad order is necessary, and such an order is recommended.⁵¹

CONCLUSIONS OF LAW

1. Menasco, Inc., is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Lodge 758, International Association of Machinists and Aerospace Workers is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing employees of Menasco, Inc., through acts of misconduct and mass picketing, as found herein, Respondent has committed, and continues to commit, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By imposing court-collectible fines on former members of the Union who had duly resigned from the Union, for their post-resignation crossing of a sanctioned picket line and working during a strike at Menasco, Inc., Respondent restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

⁴⁹ *Sheet Metal Workers Local 71 (H. J. Otten Co.)*, 193 NLRB 23 (1971); *Electrical Workers IBEW Local 2150 (Wisconsin Electric Power Co.)*, 192 NLRB 77, fn. 3 (1971), enfd. 486 F.2d 602 (7th Cir. 1973).

⁵⁰ *NLRB v. Musicians Local 66 (Civic Music Assn.)*, 514 F.2d 988 (2d Cir. 1975).

⁵¹ *Meat Cutters Local 222 (Iowa Beef Processors, Inc.)*, 233 NLRB 839 (1977) (acts of violence); *Ironworkers Local 45 (Building Contractors Association of New Jersey)*, 235 NLRB 211 (1978) (fines).

ORDER⁵²

The Respondent, Local Lodge 758, International Association of Machinists and Aerospace Workers, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining and coercing employees of Menasco, Inc. by any of the following conduct, which tends to discourage employees in the exercise of their rights to work for Menasco, Inc., or any other employer, and the right not to join or support any strike: blocking or preventing ingress and egress of employees and others, into and from Menasco's plant area, by mass picketing or by picketing of individuals or groups; threatening to inflict or inflicting bodily harm on employees or security guards, or any other individuals; placing nails or any other sharp objects in the roadways, entrances, parking lots, or other areas at Menasco's plant; jumping or climbing upon, or threatening to hit or hitting, or seizing or tipping, or slashing or puncturing the tires of, or in any other manner damaging or interfering with the operation of, any vehicle entering, leaving, or parked at or near Menasco's plant area; writing down, or posting on bulletin boards, at any picket line or within the vicinity thereof, the names, addresses or license plate numbers of temporary replacement employees; throwing firecrackers, rocks, bottles, or any other objects, at individuals, buildings or the premises of Menasco; carrying or exhibiting or threatening with any firearm at or near any picket line; threatening to follow, or following, any employees after the employees leave Menasco.

⁵² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Restraining or coercing employees who have resigned from, and no longer are members of, Menasco, Inc., in exercise of rights guaranteed them by Section 7 of the Act, by trying employees and imposing fines on them because of their post-resignation conduct in working at Menasco, Inc., during the strike which began on May 31, 1979.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Rescind the fines levied upon Respondent's former members, and refund to the named individuals any money they may have paid to Respondent pursuant to any fine found herein to have been illegal, with interest, in the manner set forth in the Remedy section of this Decision.

(b) Post at its meeting halls copies of the attached notice marked "Appendix."⁵³ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁵³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."